

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

Van Schaik

29902

**FILE:** B-216841**DATE:** November 30, 1984**MATTER OF:** Auchter Industries**DIGEST:**

1. GAO Bid Protest Procedures require that solicitation improprieties obvious on the face of the solicitation be protested before bid opening.
2. GAO does not review protests concerning affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that definitive responsibility criteria have been misapplied.
3. Contracting officer's failure to provide unsuccessful bidder notice of contract award is a procedural deficiency which does not affect the validity of the award.

Auchter Industries protests any award under invitation for bids No. 2193, a telegraphic solicitation issued by the Regional Procurement Office at the American Embassy in Bonn, West Germany, for two types of carpet. Auchter contends that the solicitation was defective in that it failed to include a delivery schedule and questions whether the acquisition should have been solicited by telegram. The protester also complains that the agency awarded a portion of the requirement to a bidder offering carpet of Olefin while the solicitation specified nylon carpet and contends that another portion of the requirement was awarded to an ineligible firm.

We dismiss the protest.

Our Bid Protest Procedures require that alleged solicitation improprieties obvious on the face of the solicitation be protested before bid opening. 4 C.F.R. § 21.2(b)(1) (1984); VANHER Corporation, B-215725, July 23, 1984, 84-2 C.P.D. ¶ 93. Auchter's protest concerning the

030691

lack of a delivery schedule and the nature of the solicitation was not filed until September 26, 1984, after the August 24 bid opening. We therefore view as untimely this portion of the protest which clearly relates to alleged obvious solicitation defects.

Auchter states that for the first of the two types of carpet solicited the agency made award to a bidder offering carpet made of Olefin at \$10.60 per yard. The protester argues, that such an award was improper because the solicitation specified nylon carpet. Auchter notes in this regard that it offered an alternate bid of \$8.76 per square yard for Olefin carpet. Thus, the protester concludes that if a bid based on Olefin is acceptable its alternate bid was low.

By letter dated October 30, however, the agency stated that the award of this item was made to a bidder offering nylon carpet at \$10.60 per yard. (The protester's price for nylon carpet was \$11.40 per yard.) The protester has provided no basis for its contention, in the face of that letter, that the award was made on the basis of a nonconforming product. We therefore will not consider this aspect of the protest further.

Auchter further contends that Douglass Industries, the firm receiving the award under the second part of the solicitation, was eliminated from participating in another carpet acquisition "for unknown specific reasons." Apparently Auchter believes that Douglass should also be disqualified here. This allegation appears to relate to Douglass' responsibility as a prospective contractor. Before award, a contracting officer must make an affirmative determination of the proposed awardee's responsibility. Our Office does not review protests concerning such determinations unless there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that definitive responsibility criteria have been misapplied. TECOM Incorporated, B-215291, June 19, 1984, 84-1 C.P.D. ¶ 644. Neither is present here.

Finally, Auchter complains that the postaward notification that it received did not comply with the Federal Acquisition Regulation, § 15.1001(c), 48 Fed. Reg. 42,102, 42,218 (1984) (to be codified at 48 C.F.R. § 15.1001(c)). The contracting officer's failure to give

sufficient notice of award is a procedural deficiency that does not affect the validity of an otherwise proper award. Technical Fiberglass, Inc., B-213940, Feb. 1, 1984, 84-1 C.P.D. ¶ 137.

The protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel